

ARMAND J. KORNFELD (WSBA #17214)
THOMAS A. BUFORD (WSBA #52969)
RICHARD B. KEETON (WSBA #51537)
BUSH KORNFELD LLP
601 Union Street, Suite 5000
Seattle, WA 98101
Tel.: (206) 292-2110
Facsimile: (206) 292-2104
Emails: jkornfeld@bskd.com,
tbuford@bskd.com, and rkeeton@bskd.com

HON. WHITMAN L. HOLT

HEARING DATE: June 6, 2022
HEARING TIME: 2:30 P.M. (PST)
LOCATION: Telephonic

RICHARD M. PACHULSKI (CA Bar #90073)*
JEFFREY W. DULBERG (CA Bar #181200)*
JASON H. ROSELL (CA Bar #269126)*
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067-4003
Tel: (310) 277-6910
Facsimile: (310) 201-0760
Emails: rpachulski@pszjlaw.com,
jdulberg@pszjlaw.com, and
jrosell@pszjlaw.com

*Admitted *Pro Hac Vice*

*Attorneys for the Chapter 11
Debtors and Debtors in Possession*

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re
EASTERDAY RANCHES, INC., *et al.*
Debtors.¹

Chapter 11

Lead Case No. 21-00141-WLH11
Jointly Administered

EASTERDAY RANCHES, INC. and
EASTERDAY FARMS,
Plaintiffs,

v.

RABO AGRIFINANCE LLC, a
Delaware limited liability corporation,
Defendant.

Adv. Proc. No. 21-80044-WLH

**DEBTORS' STATUS REPORT UPON
REOPENING OF ADVERSARY
PROCEEDING**

¹ The Debtors along with their case numbers are as follows: Easterday Ranches, Inc. (21-00141-WLH11) and Easterday Farms, a Washington general partnership (21-00176-WLH11).

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PACHULSKI STANG
ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Flr.
Los Angeles, CA 90067-4003
Telephone (310) 277-6910
Facsimile (310) 201-0760

BUSH KORNFELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

Easterday Ranches, Inc. (“Ranches”) and Easterday Farms, a Washington general partnership (“Farms”), debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”), by and through undersigned counsel, hereby file this status report (the “Status Report”) regarding the reopening of the above-captioned adversary proceeding (the “Adversary Proceeding”) and events following the *Order Dismissing the Adversary Proceeding Without Prejudice* entered on September 9, 2021 [Adv. Proc. Docket No. 32] (the “Dismissal Order”).²

A. Status of Foreclosure Action

Rabo filed a *Complaint for Judicial Foreclosure of Mortgages, and for Money Judgment Based on RCW 25.05.125* (the “District Court Complaint”) in a proceeding captioned *Rabo Agrifinance LLC v. 3E Properties, et al.*, Case No. 21-cv-05066 (the “Foreclosure Action”), pending in the District Court for the Eastern District of Washington (the “District Court”). The Foreclosure Action seeks authority from the District Court to foreclose upon certain real property referred to as the “Pasco Onion Shed,” which is titled in the name of Karen Easterday, Cody Easterday, Debby Easterday, and Gale Easterday (the “Easterday Family”).³ The Easterday Family and Jody Easterday are the only defendants remaining in the Foreclosure Action.⁴

² A capitalized term used but not defined herein shall have the meaning ascribed to it in the *Global Settlement Term Sheet*, dated April 14, 2022 (the “Global Settlement Term Sheet”), approved by this court on April 20, 2022 [Docket No. 1560].

³ In connection with the Dismissal Stipulation (defined below), Rabo agreed to dismiss from the Foreclosure Action (i) 3E Properties and Easterday Produce Co. as defendants and (ii) certain related claims, but maintain its foreclosure action with respect to the Pasco Onion Shed and the remaining defendants.

⁴ 3E Properties and Easterday Farms Produce Co. (“Easterday Produce”) filed a complaint against Rabo in the District Court, Case No. 4:21-cv-05095-SAB (the “3E-Produce Action”) alleging that they sustained damages as a result of Rabo’s pursuit of the Foreclosure Action and its assertion of liens against certain properties belonging to or being used in the businesses of 3E Properties and Easterday Produce, including, but not limited to, the Pasco Onion Shed. 3E Properties and Easterday Produce are each making contributions to the Plan and are included in the consensual

1 The Debtors initially commenced this Adversary Proceeding in connection with
2 the Debtors' obligations under that certain *Stipulation By and Between Debtors and*
3 *Non-Debtor Sellers Regarding Cooperation with Respect to the Sale of Debtor and*
4 *Non-Debtor Assets* (the "Cooperation Agreement"), which required the Debtors to
5 enjoin by consent or court order any actions by third parties against the Easterday
6 Family or their assets, including the Foreclosure Action.

7 In response to the Adversary Proceeding, the Debtors and Rabo agreed to a
8 stipulation under which, among other things, Rabo agreed to a standstill of the
9 remaining claims in the Foreclosure Action, and the Debtors agreed to dismiss the
10 Adversary Proceeding without prejudice (the "Dismissal Stipulation"). As noted above,
11 the court approved the Dismissal Stipulation and entered the Dismissal Order.

12 On February 28, 2022, Rabo filed an amended proof of claim (Farms Claim No.
13 90-4, the "Amended Rabo Claim") asserting a contingent secured claim against Farms
14 arguing that the Pasco Onion Shed may be determined to be property of Farms entitling
15 Rabo to a secured claim.⁵

16 On May 27, 2022, the Debtors filed their *Second Modified Third Amended Joint*
17 *Chapter 11 Plan of Liquidation of Easterday Ranches, Inc. and Easterday Farms*
18 [Docket No. 1653] (the "Plan") and *Disclosure Statement for the Second Modified Third*
19 *Amended Joint Chapter 11 Plan of Liquidation of Easterday Ranches, Inc. and*
20 *Easterday Farms* [Docket No. 1654] (the "Disclosure Statement").

21
22 releases to be granted to the Easterday Family under the Plan. However, 3E
23 Properties and Easterday Produce have not agreed to release their claims asserted
24 against Rabo in the 3E-Produce Action. Pursuant to the *Order Granting Defendants*
Motion for Stay [3E-Produce Action Docket No. 29], the 3E-Produce Action is
currently stayed until July 31, 2022.

25 ⁵ The Debtors filed the 3E Adversary Proceeding [Adv. No. 21-80057] asserting that
26 the Pasco Onion Shed is property of the Farms' estate. The 3E Adversary
Proceeding is currently stayed in accordance with the Global Term Sheet and will
be resolved through confirmation of the Plan.

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PACHULSKI STANG
ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Flr.
Los Angeles, CA 90067-4003
Telephone (310) 277-6910
Facsimile (310) 201-0760

BUSH KORNFIELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

1 The court approved the Disclosure Statement and scheduled a confirmation
2 hearing for July 19, 2022 at 10:00 a.m. (Pacific Time) (the “Confirmation Hearing”).
3 The Debtors are in the process of soliciting votes to accept or reject the Plan and
4 preparing for confirmation of the Plan. Under the terms of the Plan, holders of Allowed
5 Secured Claims will receive payment in full with respect to such claims (including
6 attorney’s fees and postpetition interest) and holders of Allowed Class 3 Claims (Farms
7 General Unsecured Claims) will receive a one hundred percent (100%) recovery on
8 such Allowed Class 3 Claims, excluding postpetition interest and attorney’s fees
9 relating to such claims.

10 On May 25, 2022, Rabo filed a *Notice of Termination of the Stay* in the
11 Foreclosure Action, and on May 31, 2022, the District Court entered an order lifting the
12 stay and requiring the defendants to file responsive pleadings within 10 days.

13 **B. Reopening of the Adversary Proceeding and Relief Requested**

14 Under the terms of the Global Term Sheet, the Debtors are obligated to “take any
15 and all action necessary to re-impose the stay as described in the Cooperation
16 Agreement in the event any party providing releases under [the Global Settlement Term
17 Sheet]⁶ seeks to pursue the Easterday Family.”

18 In light of Rabo’s actions lifting the stay with respect to the Foreclosure Action,
19 the Debtors are required to seek to stay the Foreclosure Action with respect to the
20 Easterday Family. Accordingly, the Debtors intend to renew their *Motion for*
21 *Temporary Restraining Order and Preliminary Injunction* [Adv. Pro. Docket No. 2]
22 (the “TRO Motion”) on an expedited basis to stay the Foreclosure Action and prohibit
23 Rabo from engaging in collection efforts against the Easterday Family until the effective
24 date of the Plan.

25
26 ⁶ Exhibit A to the Plan identifies Rabo as a party from which the Debtors must
obtain a release of the Easterday Family.

1 An injunction pursuant to section 105 is justified as Rabo's continued pursuit of
2 the Foreclosure Action with respect to the Easterday Family will interfere with the
3 Debtors' ability to confirm the Plan. The Debtors are now less than two months away
4 from the Confirmation Hearing with respect to a Plan that has the support of all of the
5 major constituencies in these chapter 11 cases, including the Farms Committee, the
6 Ranches Committee, Tyson, and Segale. In connection with the Plan and pursuant to
7 the terms of the Global Term Sheet, the Debtors must obtain releases of the Easterday
8 Family from Rabo (unless such requirement is waived by the Easterday Family) or
9 otherwise satisfy Rabo's claims in full. If the release is not obtained, and the Easterday
10 Family does not waive such condition, the Debtors may be unable to confirm the Plan.

11 Moreover, as discussed above, the Plan provides for payment in full of Allowed
12 Secured Claim and Allowed Class 3 Claim. Accordingly, at a minimum, Rabo will
13 receive payment of its Allowed Class 3 Claim in full (excluding postpetition interest
14 and attorney's fees). In light of this result under the Plan, it's wholly inexplicable why
15 Rabo would seek to reinstate the Foreclosure Action other than a litigation tactic to
16 pressure Jody Easterday to cause 3E Properties and Easterday Produce Co. to release
17 their claims against Rabo in the 3E-Produce Action.

18 The Debtors also intend to amend the Complaint to assert additional causes of
19 action against Rabo arising from its decision to unilaterally lift the stay of the
20 Foreclosure Action. For example, Rabo acknowledges in the Amended Rabo Claim
21 that the Pasco Onion Shed, which is the subject of the Foreclosure Action, may be
22 property of the Farms' estate. Accordingly, to the extent Rabo is correct and the Pasco
23 Onion Shed is property of the Farms' estate, Rabo willfully violated the automatic stay
24 when it reinstated the Foreclosure Action – without consulting the Debtors.

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PACHULSKI STANG
ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Flr.
Los Angeles, CA 90067-4003
Telephone (310) 277-6910
Facsimile (310) 201-0760

BUSH KORNFIELD LLP
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Seattle, Washington 98101-2373
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Facsimile (206) 292-2104

1 **C. Status Conference**

2 At the status conference, the Debtors intend to request a hearing date for the
3 renewed TRO Motion that seeks a temporary restraining order prohibiting Rabo from
4 taking any action in the Foreclosure Action until after the later of the (i) the effective
5 date of the Plan or (ii) August 31, 2022.

7 DATED: June 3, 2022

BUSH KORNFELD LLP

8 /s/ Thomas A. Buford, III

9 THOMAS A. BUFORD, III (WSBA 52969)

BUSH KORNFELD LLP

10 RICHARD M. PACHULSKI (Admitted *Pro Hac Vice*)

11 JEFFREY W. DULBERG (Admitted *Pro Hac Vice*)

12 JASON H. ROSELL (Admitted *Pro Hac Vice*)

PACHULSKI STANG ZIEHL & JONES LLP

13 *Attorneys for Plaintiffs and Debtors and Debtors in*
14 *Possession*

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PACHULSKI STANG
ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Flr.
Los Angeles, CA 90067-4003
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